

	)	IN THE COURT OF MILITARY
	)	COMMISSION REVIEW
)	
	)	MOTION FOR LEAVE
	)	TO FILE BRIEF AS <i>AMICUS</i>
	)	<i>CURIAE</i>
)	
	)	Case No. 09-001
)	
UNITED STATES OF AMERICA	)	Tried at Guantanamo Bay, Cuba on
	)	7 May 2008
	)	15 August 2008
Appellee	)	24 September 2008
	)	27 October – 3 November 2008
)	
	)	Before a Military Commission
v.	)	Convened by Hon. Susan Crawford
)	
	)	Presiding Military Judge
ALI HAMZA AHMAD SULIMAN	)	Colonel Peter Brownback, USA (Ret.)
AL BAHLUL	)	Colonel Ronald Gregory, USAF
)	
Appellant.	)	Date: 23 September 2009
)	

**TO THE HONORABLE JUDGES OF THE COURT OF MILITARY
COMMISSIONS REVIEW**

The undersigned individual, Jordan J. Paust, as Counsel for *Amicus Curiae* Human Rights Committee of the American Branch of the International Law Association, respectfully moves for leave to file the instant brief as *Amicus Curiae* in the case of United States of America v. Ali Hamza Ahmad Suliman Al Bahlul.

INTEREST OF AMICUS CURIAE

Amicus Curiae, the Human Rights Committee of the American Branch of the International Law Association, is composed of lawyers and professors of law who have practiced and/or lectured and/or published widely on matters addressed in this Brief and related matters.

This amicus memorandum sets forth their considered views. We generally support defendant-appellant's claim that the GTMO commissions lack lawful jurisdiction and deny equal protection, but we address issues and cases that were not addressed in defendant-appellant's brief of 1 September 2009, especially concerning relevant treaty-based and customary international laws that are among relevant laws of the United States. Members of the *Amicus Curiae* have worked and written extensively in the relevant fields and seek now to offer the results of recent and highly relevant research for consideration by this court.

Jordan J. Paust, Counsel for *Amicus Curiae* on this Brief, is the Mike & Teresa Baker Law Center Professor of the University of Houston Law Center. Professor Paust has an A.B. and J.D. from U.C.L.A., an LL.M. from the University of Virginia, and is a J.S.D. Candidate at Yale Law School. He was also a graduate of the 50th Basic Class at the U.S. Army TJAG School in 1969 and was a CAPT, JAG and member of the Faculty of The Judge Advocate General's School from 1969-1973 and a mob. des. reservist at the TJAG School from 1973-1975. He has served on several committees on international law, human rights, laws of war, terrorism, and the use of force in the American Society of International Law, the American Branch of the International Law Association, and the American Bar Association, and was the Co-Chair of the American Society's International Criminal Law Interest Group (1992-2008). He was also the Chair of the Section on International Law of the Association of American Law Schools and was on the Executive Council and the President's Committee of the American Society of International Law. He is one of the most widely cited law professors in the United States and is ranked among the top 2 percent in Leiter's study for 2000-2007. Two of his articles were cited by the U.S. Supreme Court. Among relevant books are: Paust, Van Dyke, Malone, *International Law and Litigation in the U.S.* (Thomson - West Group, American Casebook Series, 3 ed. 2009);

Paust, *International Law as Law of the United States* (2 ed. 2003); Paust, Bassiouni, *et al.*, *International Criminal Law: Cases and Materials* (3 ed. 2007); Paust, Bassiouni, *et al.*, *Human Rights Module* (2 ed. 2006). Professor Paust has published over 165 articles, book chapters, papers and essays in law journals in Belgium, Canada, China, England, Germany, Greece, Israel, Japan, the Netherlands, and the U.S.: at Yale, Harvard, Columbia, Stanford, Michigan, Virginia, Cornell, Texas, Duke, the American Journal of International Law, and elsewhere – many of which address treaties, customary international law, jurisdiction, human rights, international crimes, and the incorporation of international law into U.S. domestic law.

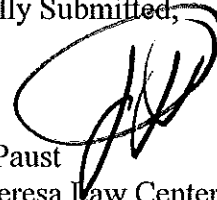
ARGUMENT IN SUPPORT OF MOTION FOR LEAVE

The legal issues encompassed within this brief are novel and necessarily warrant additional explanation. The arguments presented herein has not been developed in the pleading of this case or in any related case. The arguments made here bear directly on the outcome appropriately to be reached by this court.

The present brief focuses on treaty-based and customary international law relevant to issues concerning the jurisdiction of military commissions at Guantanamo Bay, Cuba – in particular, why the military commissions are not “regularly constituted” or “previously established in accordance with pre-existing laws” and are therefore without jurisdiction under relevant international laws; why they are also not constituted within a theater of war or war-related occupied territory and are therefore without lawful jurisdiction; and why they violate several multilateral and bilateral treaties (also important for U.S. nationals abroad) that require equal protection of the law and equality of treatment more generally and are, therefore, without lawful power or authority under supreme laws of the United States. Additional attention is paid

to the fact that certain persons at GTMO were transferred illegally and are, therefore, not properly before the commissions and should be returned.

Respectfully Submitted,

A handwritten signature in black ink, appearing to be 'J. Paust', written over a large, loopy oval shape.

Jordan J. Paust
Mike & Teresa Law Center Professor
Law Center
University of Houston
100 Law Center
Houston, Texas 77204-6060
(713) 743-2177
FAX: (713) 743-2238
jpaust@central.uh.edu

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